

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)	
OF ARTESIAN WATER COMPANY, INC.)	PSC DOCKET NO. 14-132
FOR AUTHORITY TO INCREASE RATES)	
AND CHARGES FOR WATER SERVICE)	
(Filed April 11, 2014))	

JOINT MOTION OF THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE AND THE STAFF OF THE DELAWARE PUBLIC SERVICE COMMISSION: (1) TO EXCLUDE PREFILED DIRECT, SUPPLEMENTAL AND REBUTTAL TESTIMONIES OF DAVID L. VALCARENGHI IN THE EVENT HE IS NOT PRESENT TO TESTIFY AT THE EVIDENTIARY HEARINGS; (2) TO PRECLUDE ANY OTHER WITNESS FROM ADOPTING MR. VALCARENGHI'S TESTIMONIES AT THE EVIDENTIARY HEARING; AND (3) FOR A BRIEF CONTINUANCE SHOULD THE PUBLIC ADVOCATE'S COST OF CAPITAL WITNESS BE PHYSICALLY UNABLE TO ATTEND THE HEARING

Pursuant to the Hearing Examiner's direction during the prehearing teleconference on December 2, 2014, the Division of the Public Advocate ("DPA") and the Staff of the Delaware Public Service Commission ("Staff") (together, the "Joint Movants") hereby move: (1) to exclude from evidence the prefiled direct, supplemental and rebuttal testimonies of David L. Valcarenghi unless Mr. Valcarenghi is present to testify at the evidentiary hearing; (2) to preclude any other witness from adopting Mr. Valcarenghi's testimonies at the evidentiary hearing if Mr Valcarenghi does not testify at the evidentiary hearing; and (3) for a brief continuance of the hearing in the event the Public Advocate's cost of capital witness is physically unable to attend the evidentiary hearing on December 9. In support of its motion, the Joint Movants aver as follows:

1. On April 11, 2014, Artesian Water Company, Inc. ("Artesian" or the "Company") filed an application (the "Application") with the Delaware Public Service Commission (the "Commission") to increase its rates for water service and to modify certain tariff provisions. With its Application, Artesian submitted the testimony of four witnesses: David L. Valcarenghi,

Artesian's Manager of Rates and Regulation; John F. Guastella, of Guastella Associates, LLC; Pauline M. Ahern, CRRA, a Principal of AUS Consultants; and C. Thomas deLorimier, Artesian's Manager of Engineering.

2. According to Mr. Valcarenghi's prefiled testimony, he was employed by the Maryland Public Service Commission (the "Maryland Commission") for approximately 26 years. At the Maryland Commission, he was responsible for examining and monitoring the financial health of utilities subject to regulation in Maryland, and his duties in his position included developing and analyzing base rate revenue requirements, cost recovery and regulatory reporting. (Valcarenghi Direct, page 1, lines 18). He also testified on "a number of occasions" before the Maryland Commission. *Id.*, lines 18-19. Mr. Valcarenghi testified that the purpose of his testimony was to "describe and *support*" Artesian's requested rate increase. *Id.* at 2, lines 3-4 (emphasis added).

3. By Order No. 8558 dated May 13, 2014, the Commission opened this docket to consider Artesian's Application and appointed Senior Hearing Examiner Mark Lawrence as the Hearing Examiner to schedule and conduct public comment sessions and evidentiary hearings to have a full and complete record concerning the justness and reasonableness of the proposed increased rates and tariff modifications.

4. On June 3, 2014, the Hearing Examiner approved a procedural schedule. Among other things, the procedural schedule established dates for filing prefiled supplemental, direct and rebuttal testimony; for the evidentiary hearing; and for a prehearing conference.

5. On June 30, 2014, Artesian submitted prefiled supplemental testimony from Messrs. Valcarenghi and deLorimier. Mr. Valcarenghi stated in that testimony that the purpose of the supplemental testimony was to comply with the Commission's Minimum Filing

Requirements, which require a utility using a partially-forecasted test period to update the projected data with actual data. (Valcarengi Supplemental, page 1, lines 6-11).

6. On October 27, 2014, Artesian submitted prefiled rebuttal testimony from Messrs. Valcarengi, deLorimier and Guastella and Ms. Ahern. Mr. Valcarengi stated in his rebuttal testimony that the purpose of his rebuttal testimony was to address adjustments proposed by the Commission Staff, the DPA and other intervenors. (Valcarengi Rebuttal, page 1, lines 9-17).

7. On November 26, 2014, counsel for Artesian wrote to counsel for Staff, the DPA and intervenor Christiana Care to address “a few matters related to the upcoming evidentiary hearing” The first matter addressed was Artesian’s expectation that Staff will “present all of its pre-filed testimony without any major change to its substance.” (Exhibit 1 - Letter dated November 26, 2014 from R.J. Scaggs, Jr. to James McC. Geddes, Regina A. Iorii and Todd A. Coomes). Almost as an aside, the third point was that “David Spacht will adopt the pre-filed testimony of David Valcarengi and testify at the hearing.” (*Id.*) The letter did not contain any explanation of why Mr. Valcarengi would not be available at the evidentiary hearings to support his testimony and stand cross-examination on it.

8. During the prehearing conference, the Hearing Examiner established a deadline of December 4, 2014 at noon for any prehearing motions and motions in limine. In response to the Hearing Examiner’s inquiry whether any of the parties intended to file such motions, the DPA’s counsel responded that she had no such intention at that time. Also during the prehearing conference, Artesian’s counsel pressed Staff’s counsel for a commitment that Staff would present all of the witnesses who sponsored prefiled direct testimony at the evidentiary hearing.

9. After the conference call ended, the DPA’s counsel remembered that Artesian’s counsel’s letter stated that it would be presenting a witness other than Mr. Valcarengi at the

evidentiary hearing. On December 3, 2014, DPA's counsel wrote to Artesian's counsel questioning Artesian's substitution of Mr. Spacht for Mr. Valcarengi without any explanation and asking Artesian to reconsider its position and make Mr. Valcarengi available at the evidentiary hearings to support his testimony and stand cross-examination. (Exhibit 2 - E-mail dated December 3, 2014 from Regina A. Iorii to Michael Houghton, RJ Scaggs, Jr. and Karl G. Randall).

10. Artesian's counsel responded that it intended to have Mr. Spacht adopt Mr. Valcarengi's prefiled testimony, and that it did not understand why the DPA would not be amenable to Mr. Spacht testifying instead of Mr. Valcarengi. (Exhibit 3 - Email dated December 3, 2014 from Michael Houghton to Regina A. Iorii). Artesian's counsel also responded to Staff's support for the DPA by noting that "Mr. Valcarengi is a less experienced witness than Mr. Spacht." (Exhibit 4 – Email dated December 3, 2014 from R.J. Scaggs to James McC. Geddes). Finally, Artesian's counsel countered that no rule precludes substitution at the evidentiary hearing of a witness for the person that submitted the prefiled testimony. (Exhibit 5 – Email dated December 3, 2014 from R.J. Scaggs to James McC. Geddes and Regina A. Iorii).

11. On December 3, 2014, counsel for the DPA alerted the parties and the Hearing Examiner that the DPA's cost of capital witness, Dr. Woolridge, had broken several ribs in a fall sustained over the Thanksgiving holiday and might not be able to attend the evidentiary hearing on Tuesday. (Exhibit 6 – Email dated December 3, 2014 from Regina A. Iorii to Hearing Examiner Mark Lawrence and parties).

ARGUMENT

A. If Mr. Valcarengi Does Not Appear at the Evidentiary Hearing to Support His Testimony and Stand Cross-Examination, It Should Be Excluded from the Record.

If Artesian wants to introduce Mr. Valcarengi's testimony into the record, then it should produce Mr. Valcarengi as a witness. Artesian submitted three different prefiled testimonies ostensibly prepared by Mr. Valcarengi; he should be the one to defend them and stand cross-examination on them. If Artesian does not want to proffer Mr. Valcarengi as a witness, then his testimonies should be excluded from the record.

The *only* reason that Artesian has provided for substituting Mr. Spacht for Mr. Valcarengi is Mr. Valcarengi's inexperience as a witness – and that explanation was not proffered until 4:24 p.m. on December 3. (Exh. 4).¹ Obviously, Artesian lacks confidence in Mr. Valcarengi's capabilities on the stand. Artesian tells the DPA and Staff that they should be satisfied with Mr. Spacht because he “was intimately involved in the preparation of Mr. Valcarengi's testimony [and] is thoroughly knowledgeable about all of the issues addressed therein and is the Company's CFO and the individual to whom Mr Valcarengi directly reports.” (Exhibit 3). That may all well be true, but it is irrelevant. Artesian submitted Mr. Valcarengi's prefiled testimony, not Mr. Spacht's. It is his knowledge the DPA and Staff seek to probe, not Mr. Spacht's. If Artesian wanted Mr. Spacht to be its witness at a hearing, the prefiled testimony should have been prepared and submitted in his name.

¹ The DPA and Staff are unaware of any instance in any case before this Commission in which a party has declined to proffer at an evidentiary hearing a witness that submitted prefiled testimony because of that witness' lack of experience.

Mr. Valcarenghi's prefiled testimony is akin to a pretrial deposition. Under our state courts' rules of civil procedure, pretrial depositions can be used by any party to a proceeding only if the court finds:

(i) the witness is dead; (ii) the witness is out of the State of Delaware, (unless it appears the absence of the witness was procured by the party offering the deposition); (iii) the witness is unable to testify because of age, illness, infirmity or imprisonment; (iv) the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v) upon application to the court and notice to the opposing party, exceptional circumstances exist making it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

Ch. Ct. R. 32(a)(2); Super. Ct. Civ. R. 32(a)(2); Comm. Pls. Ct. Civ. R. 32(a)(2); Fam. Ct. Civ. R. 32(a)(2).

Here, none of these factors are present. Mr. Valcarenghi is not dead. Mr. Valcarenghi is not outside the state of Delaware; indeed, he works in the State of Delaware. Mr. Valcarenghi is not unable to testify because of age, illness, infirmity or imprisonment. Artesian could procure Mr. Valcarenghi's attendance at the evidentiary hearings, since he is an Artesian employee. And Artesian has proffered no "exceptional circumstances ... making it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court," to allow the prefiled testimony to be introduced into the record.

Artesian has told the DPA and Staff that we cannot show any prejudice from the substitution. (Exh. 4). That is not our burden. It is Artesian's burden to provide a justifiable explanation for why the witness that proffered the three testimonies for Artesian is not able to do so on the stand and be subject to cross-examination. His lack of experience is an insufficient explanation, and should be rejected.

Artesian further argues that no rule precludes its proposed witness substitution, and that if there were such a rule the DPA or Staff would have cited it to Artesian. Artesian is correct: there is no rule in Delaware addressing the issue. But the flipside is also true: there is no rule permitting it either. The Joint Movants daresay that there is no such rule because the Commission believed that the party submitting the prefiled testimony would be the witness defending it at an evidentiary hearing. This is the first time in either the DPA's or Staff's counsel's long experience appearing before this Commission that a party has sought to present a different witness to support and defend the person under whose name the prefiled testimony was submitted. The Commission cannot be expected to have a rule for every situation that an imaginative lawyer can dream up.

Prefiled testimony is not evidence; it only becomes evidence when its author is sworn and authenticates it under oath.² Artesian would be entirely within its rights to decide it did not want to present Mr. Valcarengi, and none of the other parties could require it to make Mr. Valcarengi available without identifying him as a witness for them or subpoenaing him. But if the Company does not want to proffer Mr. Valcarengi to defend his testimony, the corollary is that his prefiled testimony cannot be admitted into the record. Therefore, the Joint Movants respectfully request the Hearing Examiner to exclude Mr. Valcarengi's prefiled testimonies from the record if the Company insists on proffering Mr. Spacht as its witness.

² See *In re Application of Black Fork Wind Energy, L.L.C.*, 3 N.E.3d 173, 177 (Ohio 2013) (prefiled written testimony is unsworn and is not considered evidence; only becomes evidence when witness is sworn in at the hearing and adopts it under oath); *Box Pond Ass'n v. Energy Facilities Siting Bd.*, 758 N.E.2d 604, 609 n.6 (Mass. Supr. Jud. Ct. 2001) (written prefiled testimony is admissible when the witness adopts it under oath on the record at hearing and is available for cross-examination).

B. The Hearing Examiner Should Preclude Any Other Artesian Witness from Adopting Mr. Valcarenghi's Prefiled Testimony

Artesian may contend that there have been many instances where a witness adopted the testimony of another witness without complaint from the DPA or Staff. The DPA and Staff agree that there have been such instances. But none of those instances involved a witness in a *contested matter*. The cases in which one witness adopted the prefiled testimony of another witness were *settlements* where the settling parties *agreed* that one witness would adopt the testimony of another. That is not the situation here: this is a *contested* matter, not a settlement, and the Joint Movants do *not* agree that Mr. Spacht (or any other Artesian witness) can adopt Mr. Valcarenghi's testimony.

Moreover, as briefly mentioned in the previous section, Artesian submitted the prefiled testimony under Mr. Valcarenghi's name, and it is his knowledge as the author of the testimony that the DPA and Staff are entitled to probe – not Mr. Spacht's. Again, if Artesian wanted Mr. Spacht to be the witness so that the parties could cross-examine him on his knowledge, then it should have submitted the testimony under Mr. Spacht's auspices. The Company should not now be permitted to substitute someone whom it believes might be a more knowledgeable or more experienced witness than Mr. Valcarenghi. To allow this would simply encourage parties in future matters to submit testimony under one witness' name fully expecting to change the testifying witness prior to hearing as long as they notified the other parties before the evidentiary hearing that they were going to call a different witness to testify at the evidentiary hearing. This is gamesmanship; it is fundamentally unfair. The Joint Movants respectfully submit that the Hearing Examiner should reject taking an action that could result in such gamesmanship.

C. In the Event that the DPA's Cost of Capital Witness Is Physically Unable to Attend the Evidentiary Hearing on December 9, the DPA Requests a Brief Continuance of the Hearing or to Allow Him to Appear Via Some Other Manner.

Dr. Woolridge is the DPA's cost of capital witness. He has advised counsel for the DPA that he fell over the Thanksgiving weekend and sustained several broken ribs. He has been unable to work and is unable to drive. He has advised DPA counsel that he returns to his doctor today and will provide an update. Dr. Woolridge wants very much to attend the hearing on December 9 because he does not want to delay the proceedings. However, out of an abundance of caution, in the event Dr. Woolridge is physically unable to come to Delaware, the DPA requests either a brief continuance until he is well enough to travel, or that the parties agree to take his testimony via videoconference or some other manner. Staff is amenable to the DPA's request. It appears that Artesian might also be amenable to continue the hearing as it pertains to Dr. Woolridge but to proceed with the remaining witnesses, and the DPA does not object to that procedure.

CONCLUSION

The DPA and Staff respectfully request the Hearing Examiner to require Artesian to proffer Mr. Valcarengi to defend his own testimony at the evidentiary hearing if it wants to enter his prefiled testimony into the record. If the Company does not proffer Mr. Valcarengi at the evidentiary hearing, then the Division of the Public Advocate asks that the Hearing Examiner preclude any other Artesian witness from adopting it and exclude it from the record. Finally, the Division of the Public Advocate requests a brief continuance of Dr. Woolridge's testimony in the event that he is physically unable to attend the hearing on December 9, or that his testimony be taken in some other manner acceptable to all parties.

Respectfully submitted,

/s/ Regina A. Iorii

Regina A. Iorii (#2600)
Deputy Attorney General
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Counsel for the Division of the
Public Advocate

/s/ James McC. Geddes

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Rate Counsel

Dated: December 4, 2014

EXHIBIT 1

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WILMINGTON, DELAWARE 19899-1347

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302 658 3989 FAX

R. JUDSON SCAGGS, JR.
302 351 9340
302 425 3014 FAX
rscaggs@mna.com

November 26, 2014

VIA EMAIL

James McC. Geddes, Esquire
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500 Delaware Avenue, 8th Floor
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jgeddes@ashby-geddes.com

Regina A. Iorii, Esquire
Department of Justice
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Todd A. Coomes, Esquire
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Coomes@RLF.com

Re: PSC Docket No. 14-132

Dear Jim, Gina and Todd:

I write to address a few matters related to the upcoming evidentiary hearing scheduled for December 8 and 9.

First, we understood from discussions last week that Staff will present all of its pre-filed testimony. We realize that one Staff witness is no longer employed by the Commission and that his or her testimony will be adopted by another Staff member, which is fine. We, however, want to make clear that we expect Staff to present all of its pre-filed testimony without any material change to its substance. I, of course, am not referring to the typical minor corrections that witnesses make to their pre-filed testimony on the witness stand. In our view, it is now too late for Staff to make any material changes to its positions on Artesian's application. If Staff intends to attempt any material change to the substance of its pre-filed testimony, Staff should obviously notify all parties immediately.

Second, we have no objection to Mr. Watkins and Mr. Woolridge testifying on December 9, provided that Mr. Watkins is the first witness called on December 9 (other than finishing any witness who starts on December 8). Mr. Watkins is an important witness in this case and we want to make sure we have adequate time for cross-examination. We believe that

James McC. Geddes, Esquire
Regina A. Iorii, Esquire
Todd A. Coomes, Esquire
November 26, 2014
Page 2

the parties should be able to arrange to have Mr. Collins testify during the afternoon of December 8.

Third, David Spacht will adopt the pre-filed testimony of David Valcarengi and testify at the hearing.

We appreciate your cooperation on these issues, so that we can have a smooth and efficient hearing. Happy Thanksgiving.

Sincerely yours,

A handwritten signature in black ink, appearing to be "R. Hudson Scaggs, Jr.", written over a circular stamp or seal.

R. Hudson Scaggs, Jr.

/lrg

cc: William C. Oliva (via email at stoneandbuck@yahoo.com)

EXHIBIT 2

Iorii, Regina (DOJ)

From: Iorii, Regina (DOJ)
Sent: Wednesday, December 03, 2014 12:03 PM
To: 'Houghton, Michael'; rscaggs@mnat.com; 'Randall, Karl'
Cc: Lawrence, Mark (DOS); Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS); 'James Geddes'; 'Coomes, Todd A.'; Josephine Oliva
Subject: Docket No. 14-132 (Artesian Rate Increase Request): Artesian's Witnesses
Importance: High

Dear Mike, RJ and Karl:

In Artesian's letter to opposing counsel last week, Artesian indicated that David Spacht would be adopting the prefiled testimonies of David Valcarengi, Artesian's overall policy and revenue requirement witness. I did not focus on that at the time of the letter, but after yesterday's prehearing conference call, when Artesian was insistent upon Staff promising to present all of its witnesses, I began thinking about why Mr. Valcarengi will not be presenting his own testimony and standing cross-examination on it. Is he ill? Out of the country? Otherwise unavailable? The letter did not state why Mr. Valcarengi would not be supporting his own testimony and standing cross-examination on it.

In light of Artesian's insistence that all of Staff's witnesses who filed prefiled testimony appear at the hearing to testify regarding their prefiled testimony, I question why Artesian is not holding itself to that same standard.

I ask Artesian to reconsider its position with respect to its overall policy/revenue requirement witness and respond to me by the close of business today that Mr. Valcarengi will appear at the hearing to support his own testimony and stand cross-examination on it. Otherwise, the DPA will be forced subpoena Mr. Valcarengi and/or to move to exclude Mr. Valcarengi's testimony.

On a separate matter, I am advised that Mr. Watkins is still in the hospital. I will keep you updated as to what I hear regarding his situation.

Regards, Gina

Regina A. Iorii
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Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8159
regina.iorii@state.de.us

EXHIBIT 3

Iorii, Regina (DOJ)

From: Houghton, Michael [MHoughton@MNAT.com]
Sent: Wednesday, December 03, 2014 2:31 PM
To: Iorii, Regina (DOJ); Scaggs, R.J.; Randall, Karl
Cc: Lawrence, Mark (DOS); Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS); 'James Geddes'; 'Coomes, Todd A.'; Josephine Oliva
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request): Artesian's Witnesses

Gina:

We are in receipt of your email this morning objecting to Mr. Spacht adopting Mr. Valcarengi's testimony. As you note, we raised this issue in a letter to the parties dated November 26, 2014 and your current objection was not raised during yesterday's prehearing conference call with Hearing Examiner Lawrence.

Artesian has not insisted that Staff witnesses who have submitted testimony present the testimony themselves.

In fact, in the November 26 letter we specifically note that we were aware that pre-filed testimony submitted by one staff member would be adopted by another and agreed to as much.

Our issue has been and remains insuring that all pre-filed testimony is in fact introduced into the record of the case. If any such pre-filed testimony is sponsored by another witness – as we noted in our November 26 letter regarding Staff's intention – we are amenable to that course of action.

We see no reason why the parties in this proceeding should not be amenable to Mr. Spacht--who was intimately involved in the preparation of Mr. Valcarengi's testimony, is thoroughly knowledgeable about all of the issues addressed therein and is the Company's CFO and the individual to whom Mr. Valcarengi directly reports --from appearing and testifying.

Others have often adopted pre-filed testimony and appeared at hearings in PSC matters before, this has been the regular practice at the Commission for many years, in our experience.

There is no prejudice to the parties in this case--unlike a circumstance where pre-filed testimony is not submitted at the hearing and no witness appears in the matter to address the substance of that testimony.

In fact, in light of the unfortunate health problems being encountered by both of DPA's witnesses Mr. Watkins' and Dr. Woolridge's , Artesian is not opposed to other knowledgeable DPA representatives adopting, presenting and being cross examined with respect to each of Mr. Watkins and Dr. Woolridge's testimony at the hearing next week, should they continue to be unavailable.

We believe doing as much keeps the schedule and hearing process moving forward, to which we are committed.

If the DPA seeks to subpoena Mr. Valcarengi--which we hope the DPA does not--we will respond quickly and we will look forward to a prompt resolution of the matter by the Hearing Examiner.

Artesian is fully prepared to proceed to hearing next Monday and Tuesday.

Michael Houghton

Michael Houghton, Esq.
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Direct Dial: (302) 351-9215

From: Iorii, Regina (DOJ) [mailto:regina.iorii@state.de.us]
Sent: Wednesday, December 03, 2014 12:03 PM
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Cc: Lawrence, Mark (DOS); Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS); 'James Geddes'; 'Coomes, Todd A.'; Josephine Oliva
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In light of Artesian's insistence that all of Staff's witnesses who filed prefiled testimony appear at the hearing to testify regarding their prefiled testimony, I question why Artesian is not holding itself to that same standard.

I ask Artesian to reconsider its position with respect to its overall policy/revenue requirement witness and respond to me by the close of business today that Mr. Valcarengi will appear at the hearing to support his own testimony and stand cross-examination on it. Otherwise, the DPA will be forced subpoena Mr. Valcarengi and/or to move to exclude Mr. Valcarengi's testimony.

On a separate matter, I am advised that Mr. Watkins is still in the hospital. I will keep you updated as to what I hear regarding his situation.

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Iorii, Regina (DOJ)

From: Iorii, Regina (DOJ)
Sent: Wednesday, December 03, 2014 12:03 PM
To: 'Houghton, Michael'; rscaggs@mnat.com; 'Randall, Karl'
Cc: Lawrence, Mark (DOS); Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS); 'James Geddes'; 'Coomes, Todd A.'; Josephine Oliva
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Regards, Gina

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EXHIBIT 4

Iorii, Regina (DOJ)

From: Scaggs, R.J. [RScaggs@MNAT.com]
Sent: Wednesday, December 03, 2014 4:24 PM
To: 'James Geddes'; Iorii, Regina (DOJ)
Cc: Randall, Karl; Lawrence, Mark (DOS); Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS); Coomes, Todd A.; Josephine Oliva; dspacht@artesianwater.com; Houghton, Michael
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request): Artesian's Witnesses

Jim:

Thanks for letting us know your position.

In previous cases you and Regina allowed this type of adoption of testimony without objection. Your belated attempt at an objection is a regrettable and transparent tactical maneuver to throw the Company off its hearing preparation and because Mr. Valcarengi is a less experienced witness than Mr. Spacht. Neither you nor Gina has articulated any prejudice, because none exists.

We intend to put on the most knowledgeable witness, who is undeniably qualified and intimately familiar with the testimony and the issues.

We will respond to the motions that Staff and DPA will apparently file on this issue, I assume by Noon tomorrow.

On the issue of a continuance, we see no need to delay the entire hearing because of health problems of two of the DPAs witnesses. All the arrangements have been made and the time scheduled with counsel, the other witnesses (at least a few of whom have very busy schedules and are traveling for this hearing), the hearing examiner and the facility. We can reconvene as soon as the DPA witnesses are healthy enough to appear for the purpose of taking their testimony. If either of you intend to seek a continuance, it seems that you already should have done so, but I would expect, at a minimum, that any motion for a continuance would also be filed tomorrow by Noon.

RJ

From: James Geddes [mailto:jamesgeddes@mac.com]
Sent: Wednesday, December 03, 2014 3:25 PM
To: Houghton, Michael
Cc: Iorii, Regina (DOJ); Scaggs, R.J.; Randall, Karl; Lawrence, Mark (DOS); Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS); Coomes, Todd A.; Josephine Oliva
Subject: Re: Docket No. 14-132 (Artesian Rate Increase Request): Artesian's Witnesses

Michael --I am not sure why this is an issue. If I understand the situation, Mr. Valcarengi is not planning to testify --not do to any conflicts i.e. illness, emergency --but because he is not sufficiently familiar with the issues he addressed in his testimony or that Mr. Spacht is somehow more familiar with those issues because Mr. Valcarengi works for Mr. Spacht and the Company is more comfortable in having Mr. Spacht address those issues rather than Mr. Valcarengi?

Normally, other witnesses sponsor testimony --as in this case with Mr. Teixeira --because he is no longer with the Commission, or were the expense of bringing the witness to the hearing room does not make sense on a non-contested matter. But here, if I understand correctly, that situation does not exist. Rather the Company prefers Mr Spacht to be its witness with regard to Mr. Valcarengi's testimony. If that is the case, then one would ask why did Mr. Valcarengi file the testimony in the first place?

I believe the DPA is correct --Mr. Valcarengi should defend his pre-filed testimony, absence sufficient cause excusing from doing so. We support the DPA's position on this issue.

Any questions, give me a call.

Regards,

Jim
James McC. Geddes
Ashby & Geddes
500 Delaware Ave
Wilmington, DE 19801

On Dec 3, 2014, at 2:30 PM, Houghton, Michael <MHoughton@MNAT.com> wrote:

Gina:

We are in receipt of your email this morning objecting to Mr. Spacht adopting Mr. Valcarengi's testimony. As you note, we raised this issue in a letter to the parties dated November 26, 2014 and your current objection was not raised during yesterday's prehearing conference call with Hearing Examiner Lawrence.

Artesian has not insisted that Staff witnesses who have submitted testimony present the testimony themselves.

In fact, in the November 26 letter we specifically note that we were aware that pre-filed testimony submitted by one staff member would be adopted by another and agreed to as much.

Our issue has been and remains insuring that all pre-filed testimony is in fact introduced into the record of the case. If any such pre-filed testimony is sponsored by another witness – as we noted in our November 26 letter regarding Staff's intention – we are amenable to that course of action.

We see no reason why the parties in this proceeding should not be amenable to Mr. Spacht--who was intimately involved in the preparation of Mr. Valcarenghi's testimony, is thoroughly knowledgeable about all of the issues addressed therein and is the Company's CFO and the individual to whom Mr. Valcarenghi directly reports --from appearing and testifying. Others have often adopted pre-filed testimony and appeared at hearings in PSC matters before, this has been the regular practice at the Commission for many years, in our experience.

There is no prejudice to the parties in this case--unlike a circumstance where pre-filed testimony is not submitted at the hearing and no witness appears in the matter to address the substance of that testimony.

In fact, in light of the unfortunate health problems being encountered by both of DPA's witnesses Mr. Watkins' and Dr. Woolridge's , Artesian is not opposed to other knowledgeable DPA representatives adopting, presenting and being cross examined with respect to each of Mr. Watkins and Dr. Woolridge's testimony at the hearing next week, should they continue to be unavailable.

We believe doing as much keeps the schedule and hearing process moving forward, to which we are committed.

If the DPA seeks to subpoena Mr. Valcarenghi--which we hope the DPA does not--we will respond quickly and we will look forward to a prompt resolution of the matter by the Hearing Examiner.

Artesian is fully prepared to proceed to hearing next Monday and Tuesday.

Michael Houghton

Michael Houghton, Esq.
Morris, Nichols, Arsht & Tunnell LLP
1201 N. Market Street, 18th Fl
P.O. Box 1347
Wilmington, Delaware 19899-1347
Direct Dial: (302) 351-9215
Direct Fax: (302) 425-4675
Email: mhoughton@mnat.com

From: Iorii, Regina (DOJ) [<mailto:regina.iorii@state.de.us>]
Sent: Wednesday, December 03, 2014 12:03 PM
To: Houghton, Michael; Scaggs, R.J.; Randall, Karl
Cc: Lawrence, Mark (DOS); Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS); 'James Geddes'; 'Coomes, Todd A.'; Josephine Oliva
Subject: Docket No. 14-132 (Artesian Rate Increase Request): Artesian's Witnesses
Importance: High

Dear Mike, RJ and Karl:

In Artesian's letter to opposing counsel last week, Artesian indicated that David Spacht would be adopting the prefiled testimonies of David Valcarengi, Artesian's overall policy and revenue requirement witness. I did not focus on that at the time of the letter, but after yesterday's prehearing conference call, when Artesian was insistent upon Staff promising to present all of its witnesses, I began thinking about why Mr. Valcarengi will not be presenting his own testimony and standing cross-examination on it. Is he ill? Out of the country? Otherwise unavailable? The letter did not state why Mr. Valcarengi would not be supporting his own testimony and standing cross-examination on it.

In light of Artesian's insistence that all of Staff's witnesses who filed prefiled testimony appear at the hearing to testify regarding their prefiled testimony, I question why Artesian is not holding itself to that same standard.

I ask Artesian to reconsider its position with respect to its overall policy/revenue requirement witness and respond to me by the close of business today that Mr. Valcarengi will appear at the hearing to support his own testimony and stand cross-examination on it. Otherwise, the DPA will be forced subpoena Mr. Valcarengi and/or to move to exclude Mr. Valcarengi's testimony.

On a separate matter, I am advised that Mr. Watkins is still in the hospital. I will keep you updated as to what I hear regarding his situation.

Regards, Gina

Regina A. Iorii
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
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(302) 577-8159
regina.iorii@state.de.us

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EXHIBIT 5

Iorii, Regina (DOJ)

From: Scaggs, R.J. [RScaggs@MNAT.com]
Sent: Wednesday, December 03, 2014 5:02 PM
To: Iorii, Regina (DOJ); 'James Geddes'
Cc: Randall, Karl; Lawrence, Mark (DOS); Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS); Coomes, Todd A.; Josephine Oliva; dspacht@artesianwater.com; Houghton, Michael
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request): Artesian's Witnesses

Gina and Jim:

I had not seen Gina's email on Mr. Watkins. Good news. We will certainly work with you on getting Mr. Woolridge's testimony.

You are simply making up a "burden of proof" on the Company because you say it. No rule requires the same witness that pre-files testimony to present it at a hearing. If there is such a rule, I feel sure you would have cited it to me by now. As Jim has reminded me on multiple occasions – none of the pre-filed testimony is in the hearing record until sponsored and admitted through a witness.

This is the company's rate case. It should be allowed to present its most knowledgeable witness. I think this is enough emails on the topic. We will respond to your motion and ask for a prompt teleconference with the Hearing Examiner.

RJ

From: Iorii, Regina (DOJ) [mailto:regina.iorii@state.de.us]
Sent: Wednesday, December 03, 2014 4:30 PM
To: Scaggs, R.J.; 'James Geddes'
Cc: Randall, Karl; Lawrence, Mark (DOS); Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS); Coomes, Todd A.; Josephine Oliva; dspacht@artesianwater.com; Houghton, Michael
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request): Artesian's Witnesses

RJ – you obviously didn't see my email regarding Mr. Watkins. He has been discharged and intends to appear. As for Dr. Woolridge, I will advise as soon as I know anything. We are trying NOT to delay the hearings. Believe me, I want these done too. If you want me to file a needless motion, I will do so.

As to the witness issue: It is not our burden to articulate prejudice. It is Artesian's burden to explain why the sponsoring witness for three different sets of prefiled testimony suddenly is not available. If Mr. Spacht was the most knowledgeable witness then he should have been the one to submit the testimony. The fact that Mr. Valcarengi is less experienced is no justification. His testimony says he testified "a number of times" before the Maryland Commission.

Regina A. Iorii
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From: Scaggs, R.J. [<mailto:RScaggs@MNAT.com>]

Sent: Wednesday, December 03, 2014 4:24 PM

To: 'James Geddes'; Iorii, Regina (DOJ)

Cc: Randall, Karl; Lawrence, Mark (DOS); Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS); Coomes, Todd A.; Josephine Oliva; dspacht@artesianwater.com; Houghton, Michael

Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request): Artesian's Witnesses

Jim:

Thanks for letting us know your position.

In previous cases you and Regina allowed this type of adoption of testimony without objection. Your belated attempt at an objection is a regrettable and transparent tactical maneuver to throw the Company off its hearing preparation and because Mr. Valcarengi is a less experienced witness than Mr. Spacht. Neither you nor Gina has articulated any prejudice, because none exists.

We intend to put on the most knowledgeable witness, who is undeniably qualified and intimately familiar with the testimony and the issues.

We will respond to the motions that Staff and DPA will apparently file on this issue, I assume by Noon tomorrow.

On the issue of a continuance, we see no need to delay the entire hearing because of health problems of two of the DPAs witnesses. All the arrangements have been made and the time scheduled with counsel, the other witnesses (at least a few of whom have very busy schedules and are traveling for this hearing), the hearing examiner and the facility. We can reconvene as soon as the DPA witnesses are healthy enough to appear for the purpose of taking their testimony. If either of you intend to seek a continuance, it seems that you already should have done so, but I would expect, at a minimum, that any motion for a continuance would also be filed tomorrow by Noon.

RJ

From: James Geddes [<mailto:jamesgeddes@mac.com>]

Sent: Wednesday, December 03, 2014 3:25 PM

To: Houghton, Michael

Cc: Iorii, Regina (DOJ); Scaggs, R.J.; Randall, Karl; Lawrence, Mark (DOS); Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS); Coomes, Todd A.; Josephine Oliva

Subject: Re: Docket No. 14-132 (Artesian Rate Increase Request): Artesian's Witnesses

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Michael Houghton

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Direct Fax: (302) 425-4675
Email: mhoughton@mnat.com

From: Iorii, Regina (DOJ) [<mailto:regina.iorii@state.de.us>]
Sent: Wednesday, December 03, 2014 12:03 PM
To: Houghton, Michael; Scaggs, R.J.; Randall, Karl
Cc: Lawrence, Mark (DOS); Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS); 'James Geddes'; 'Coomes, Todd A.'; Josephine Oliva
Subject: Docket No. 14-132 (Artesian Rate Increase Request): Artesian's Witnesses
Importance: High

Dear Mike, RJ and Karl:

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On a separate matter, I am advised that Mr. Watkins is still in the hospital. I will keep you updated as to what I hear regarding his situation.

Regards, Gina

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EXHIBIT 6

Iorii, Regina (DOJ)

From: Iorii, Regina (DOJ)
Sent: Wednesday, December 03, 2014 4:08 PM
To: Iorii, Regina (DOJ); Lawrence, Mark (DOS)
Cc: 'Houghton, Michael'; rscaggs@mnat.com; Randall, Karl; dspacht@artesianwater.com; David Valcarengi; Jack Schreppler; Stephanie Keithley (skeithley@artesianwater.com); 'tdelorimier@artesianwater.com'; 'Coomes, Todd A.'; RMulrooney@christianacare.org; Josephine Oliva; 'James Geddes'; Donoghue, Julie M (DOS); Howatt, Robert (DOS); Dillard, Janis L (DOS); McDowell, Connie (DOS); Davis, Malika (DOS); Woodward, Amy (DOS); Driggins, Lisa (DOS); Loper, Toni (DOS); Marshall, Clishona (DOS); Smith, Jason (DOS); davep@chesapeake.net; 'parcelld@tai-econ.com' (parcelld@tai-econ.com); 'excel.consulting@sbcglobal.net' (excel.consulting@sbcglobal.net) (excel.consulting@sbcglobal.net); Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS); J. Randall (Randy) Woolridge (jrwoolridge@gmail.com); 'Glenn Watkins'
Subject: RE: Docket No. 14-132, Artesian Water Co. Request for Increase in Rates: HIGH IMPORTANCE

Dear Mr. Lawrence:

I have just spoken with Mr. Watkins. He has been discharged from the hospital and plans to be present on Tuesday for the evidentiary hearing.

As I have advised other parties, Dr. Woolridge broke several ribs in a fall this past weekend. He is currently not working and is not permitted to drive. He has an appointment with his doctor tomorrow and will advise me whether he will be able to attend the hearings. I spoke with him today and he very much wants to attend, but it will depend on what his doctor says. If Dr. Woolridge cannot attend in person, I may have to request a continuance of the hearings for his testimony or perhaps make some sort of videoconferencing arrangement. Again, as soon as I hear anything I will notify all parties.

Respectfully yours,

/s/ Regina A. Iorii

Regina A. Iorii
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8159
regina.iorii@state.de.us

From: Iorii, Regina (DOJ)
Sent: Tuesday, December 02, 2014 4:51 PM
To: Lawrence, Mark (DOS)
Cc: 'Houghton, Michael'; rscaggs@mnat.com; Randall, Karl; dspacht@artesianwater.com; David Valcarengi; Jack Schreppler; Stephanie Keithley (skeithley@artesianwater.com); 'tdelorimier@artesianwater.com'; 'Coomes, Todd A.'; RMulrooney@christianacare.org; Josephine Oliva; 'James Geddes'; Donoghue, Julie M (DOS); Howatt, Robert (DOS); Dillard, Janis L (DOS); McDowell, Connie (DOS); Davis, Malika (DOS); Woodward, Amy (DOS); Driggins, Lisa (DOS); Loper, Toni (DOS); Marshall, Clishona (DOS); Smith, Jason (DOS); davep@chesapeake.net; 'parcelld@tai-econ.com' (parcelld@tai-econ.com); 'excel.consulting@sbcglobal.net' (excel.consulting@sbcglobal.net) (excel.consulting@sbcglobal.net); Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS); J. Randall (Randy) Woolridge (jrwoolridge@gmail.com); 'Jenny Dolen'

Subject: Docket No. 14-132, Artesian Water Co. Request for Increase in Rates: HIGH IMPORTANCE
Importance: High

Dear Mr. Lawrence:

As you know, Glenn Watkins is one of the DPA's witnesses in this case. I have just received word from Mr. Watkins' assistant that he was admitted into the hospital today for tests. I have asked Mr. Watkins' assistant to keep me informed; however, I did want to advise you and the parties of this development in the event that he is unable to attend the evidentiary hearings.

Respectfully yours,

/s/ Regina A. Iorii

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